(1)

Supreme Court, U.S.
FILED

95 390 SEP 5 1995

OFFICE OF THE CLERK

No. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1995

THE HONORABLE ESTHER R. SYLVESTER, NANCY SOBOLEVITCH, GEOFF GALLAS, MATTHEW THERNEY, JOSEPH DI PRIMIO AND ANDREA HOFFMAN-JELIN,
*Petitioners,*

v.

ANDRE M. BRYANT AND FATHERS' AND CHILDREN'S EQUALITY, INC.,
*Respondents.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## PETITION FOR A WRIT OF CERTIORARI

ARLIN M. ADAMS*
MICHAEL J. BARRY
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, PA 19103-4252
(215) 751-2072

DAVID M. DONALDSON

Administrative Office of
Pennsylvania Courts
Suite 1414, 1515 Market Street
Philadelphia, Pennsylvania 19102

*Counsel for Petitioners*

40 pp

## QUESTION PRESENTED

Whether a district court's denial of a motion to dismiss based on the *Rooker-Feldman* doctrine is appealable as a collateral order under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949).

## TABLE OF CONTENTS

Page

QUESTION PRESENTED . . . . . i

TABLE OF CONTENTS . . . . . ii

TABLE OF AUTHORITIES . . . . . iii

PRELIMINARY STATEMENT . . . . . 1

OPINIONS BELOW . . . . . 1

JURISDICTION . . . . . 2

STATUTORY PROVISIONS INVOLVED . . . . . 2

STATEMENT OF THE CASE . . . . . 3

REASONS FOR GRANTING THE PETITION . . . . . 5

A. The *Rooker-Feldman* Doctrine Protects the Finality of Judgments of State Courts and Maintains the Integrity of the State Court Judiciary as a Whole . . . . . 6

B. The Denial of a Motion to Dismiss Based on the *Rooker-Feldman* Doctrine Is Immediately Appealable as a Collateral Order . . . . . 7

CONCLUSION . . . . . 13

APPENDIX

A. *Bryant v. Sylvester*, 57 F.3d 308 (3d Cir. 1995) . . . . 1a

B. *Bryant v. Sylvester*, No. 94-1990, 1994 WL 317848 (E.D. Pa. June 22, 1994) . . . . . 18a

C. *Bryant v. Sylvester*, No. 150 E.D. Misc. Dkt. 1993 (Pa., December 17, 1993) . . . . . 21a

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| *Blake v. Papadakos*, 953 F.2d 68 (3d Cir. 1992) | 10 |
| *Bryant v. Sylvester*, 57 F.3d 308 (3d Cir. 1995) | 1, 5, 11 |
| *Bryant v. Sylvester*, No. 94-1635, 1995 WL 265303 (3d Cir. May 9, 1995). | 5 |
| *Bryant v. Sylvester*, No. 94-1990, 1994 WL 317848 (E.D. Pa. June 22, 1994) | 2, 4 |
| *Bryant v. Sylvester*, No. 150 E.D. Misc. Dkt. 1993 (Pa. December 17, 1993) | 3 |
| *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949) | i, 5, 8 |
| *Digital Equipment Corp. v. Desktop Direct, Inc.*, 114 S. Ct. 1992 (1994) | 8, 9 |
| *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) | 6 |
| *Guarino v. Larsen*, 11 F.3d 1151 (3d Cir. 1993) | 10 |
| *Howlett v. Rose*, 496 U.S. 356 (1990) | 6 |
| *Johnson v. Jones*, 115 S. Ct. 2151 (1995) | 10 |
| *Martin v. Wilks*, 490 U.S. 755 (1989) | 7 |

## TABLE OF AUTHORITIES *(Continued)*


| Cases | Page |
|---|---|
| *Midland Asphalt v. United States*, 489 U.S. 794 (1989) | 9 |
| *Mitchell v. Forsyth*, 472 U.S. 511 (1985) | 12 |
| *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 113 S. Ct. 684 (1993) | 8 |
| *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) | 6 |
| *Younger v. Harris*, 401 U.S. 37 (1971) | 6 |
| **Statutes and Rules** | |
| 28 U.S.C. § 1254(1) | 2 |
| 28 U.S.C. § 1257 | 2, 3, 6, 10 |
| 28 U.S.C. § 1291 | 2, 9, 12 |
| 28 U.S.C. § 1331 | 4 |
| FED. R. CIV. P. 12(b) | 4 |

No. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1995

THE HONORABLE ESTHER R. SYLVESTER, NANCY SOBOLEVITCH, GEOFF GALLAS, MATTHEW THERNEY, JOSEPH DI PRIMIO AND ANDREA HOFFMAN-JELIN,
*Petitioners,*

v.

ANDRE M. BRYANT AND FATHERS' AND CHILDREN'S EQUALITY, INC.,
*Respondents.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## PETITION FOR A WRIT OF CERTIORARI

## PRELIMINARY STATEMENT

Petitioners named in the caption respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals is reported at 57 F.3d 308 (3d Cir. 1995) (Appendix A, 1a -17a). The district court's

opinion is unreported but may be found at 1994 WL 317848 (E.D. Pa. June 22, 1994) (Appendix B, 18a-20a).

## JURISDICTION

The court of appeals' original judgment was entered on May 9, 1995. Petitioners timely petitioned for rehearing. On June 1, 1995, the court of appeals granted the petition for rehearing and vacated its opinion and judgment of May 9. The court of appeals' modified judgment was entered on June 8, 1995. Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

Section 1257 of 28 U.S.C. provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution of . . . the United States.

Section 1291 of 28 U.S.C. provides:

> The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .

## STATEMENT OF THE CASE

The Family Court Division of the Court of Common Pleas of Philadelphia County[1] operates a nursery at the Family Court Building in Philadelphia. The court provides this nursery for court-ordered supervised visitation. In November of 1993, The Honorable Esther R. Sylvester, Administrative Judge of the Family Court Division, a defendant in this case and one of the petitioners here, approved the closing of the nursery on two dates: December 26, 1993 and January 2, 1994, two days designated by the Commonwealth of Pennsylvania as legal holidays. Plaintiffs (respondents here), Andre Bryant, a noncustodial parent restricted by court order to visitation in the court-operated nursery, and Fathers' and Children's Equality, Inc., a nonprofit Pennsylvania corporation "chartered to insure the continual access of children to their non-custodial parents and extended family members," brought an action in the Commonwealth Court of Pennsylvania against Judge Sylvester and other persons involved in judicial administration in Pennsylvania. The action sought to enjoin the defendants from closing the nursery on the designated legal holidays. The basis of plaintiffs' complaint was that the defendants had violated plaintiffs' First and Fourteenth amendment rights. After argument, the court declined to deal with the matter and referred it to the Supreme Court of Pennsylvania, the state's highest court. That court denied plaintiffs' request for a preliminary injunction and writ of mandamus on December 17, 1993. No. 150 E.D. Misc. Dkt. 1993 (Appendix C, 21a). Plaintiffs did not seek review by this Court pursuant to 28 U.S.C. § 1257.

About three months later, in March of 1994, Judge Sylvester again authorized the closing of the nursery, this time

---

[1] The Court of Common Pleas is the court of original jurisdiction for the Commonwealth of Pennsylvania.

on Easter Sunday, April 3, 1994. The same plaintiffs then started this action in the United States District Court for the Eastern District of Pennsylvania, invoking that court's federal-question jurisdiction under 28 U.S.C. § 1331.

In their action in the district court, plaintiffs, on behalf of themselves and others "similarly situated," asserted that by closing the nursery, Judge Sylvester and the other defendants had violated plaintiffs' rights under the First and Fourteenth amendments because the closings were on days that many persons consider religious holidays. This was essentially the same claim plaintiffs had made in their state-court action. In addition to injunctive relief, plaintiffs sought money damages.

Defendants moved to dismiss under FED. R. CIV. P. 12(b)(1) and (6), contending, *inter alia*, that Eleventh Amendment immunity, qualified immunity and the *Rooker-Feldman* doctrine required dismissal of the action. The district court (Brody, J.) denied the motion to dismiss on the ground that closing of the nursery was administrative and not adjudicative so that the judicial immunity doctrine was not applicable. *Significantly, however, the district court ignored the critical fact that the Pennsylvania Supreme Court had issued an order denying relief in plaintiffs' state-court action.* The opinion of the district court did not refer, as required by applicable Third Circuit precedent, to the earlier order by the Pennsylvania Supreme Court, did not refer to Eleventh Amendment immunity, and did not refer to the *Rooker-Feldman* doctrine. Instead, the district court rejected *sub silentio* all three of defendants' contentions. *Bryant v. Sylvester*, No. 94-1990, 1994 WL 317848 (E.D. Pa. June 22, 1994) (Appendix B, 18a-20a).

Defendants appealed to the court below on the ground that the district court had erred in its holding on the issue of absolute judicial immunity and in its failure to apply *Rooker-*

*Feldman*. On May 9, 1995, a panel of the court of appeals (Stapleton, Roth and Lewis, JJ.) issued an opinion and order dismissing defendants' appeal, holding that the denial of a motion to dismiss based on the *Rooker-Feldman* doctrine is not appealable as a collateral order. *Bryant v. Sylvester*, No. 94-1635, 1995 WL 265303 (3d Cir. May 9, 1995). Defendants petitioned for rehearing on May 23, 1995. The court of appeals granted that petition on June 1, 1995 and vacated its original opinion. On June 8, 1995, the court of appeals issued an amended opinion and order, found that defendants had waived the issue of absolute judicial immunity at oral argument, and dismissed the appeal on the ground that the *Rooker-Feldman* issue does not present an appealable collateral order under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). *Bryant v. Sylvester*, 57 F.3d 308 (3d Cir. 1995) (Appendix A, 1a-17a).

## REASONS FOR GRANTING THE PETITION

The holding of the United States Court of Appeals for the Third Circuit that the denial of defendants' motion to dismiss based on the *Rooker-Feldman* doctrine is not appealable as a collateral order and must await the conclusion of the proceedings in the district court amounts to decision of a federal question in a way that conflicts with a federal statute as well as with applicable decisions of this Court. The holding compromises the protection given state courts by the *Rooker-Feldman* doctrine and disregards the principles of federalism and comity that form an important part of the constitutional framework of this nation. Because the decision by the court of appeals severely denigrates the integrity of judgments rendered by state courts by allowing what is, in effect, appellate review of state court judgments by federal district courts, this Court should grant this petition for writ of certiorari and reverse the judgment of the court of appeals.

### A. The *Rooker-Feldman* Doctrine Protects the Finality of Judgments of State Courts and Maintains the Integrity of the State Court Judiciary as a Whole.

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), this Court held that a party who gets an adverse ruling from the highest court of a state may not bring a later action in a federal district court to set aside or bypass that ruling. In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), this Court again declared that the United States district courts have no authority to review final judgments of a state court. Rather, the aggrieved party must seek review of such judgments, if at all, by an application to this Court under 28 U.S.C. § 1257. Together, the holdings of these cases maintain the integrity of state court judgments under what has become known as the *Rooker-Feldman* doctrine.

While often couched in terms of subject matter jurisdiction, *Rooker-Feldman* implicates concerns well beyond those presented by merely jurisdictional issues. *Rooker-Feldman* protects state court judgments from collateral attacks in federal district courts. For state judicial systems to have meaningful authority, it is necessary that judgments rendered by a state court be afforded the same respect as judgments by a federal court. In *Younger v. Harris*, 401 U.S. 37, 44-45 (1971), this Court recognized that federalism demands . . .

> . . .a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways. . .

*See also Howlett v. Rose*, 496 U.S. 356, 369-70 (1990).

This principle of federalism requires that judgments of state courts must be protected from collateral attack in any federal forum. In *Martin v. Wilks*, 490 U.S. 755, 783 n.21 (1989), this Court explained the importance of this protection:

> "If, after the rendition of a judgment by a court of competent jurisdiction, and after the period has elapsed when it becomes irreversible for error, another court may in another suit inquire into the irregularities or errors in such judgment, there would be no end to litigation and no fixed established rights . . ." In addition to undermining this interest in finality, permitting collateral attacks also leads to the anomaly that courts will, on occasion, be required to sit in review of judgments entered by other courts of equal -- or even greater -- authority.

By protecting judgments of a state court from collateral attack in federal district courts, *Rooker-Feldman* protects the concerns that this Court in *Younger* found critical. As a result, *Rooker-Feldman* not only limits the subject matter jurisdiction of federal district courts by precluding their review of final state court adjudications, but also occupies a vital position in furthering federalism and comity.

**B. The Denial of a Motion to Dismiss Based on the *Rooker-Feldman* Doctrine Is Immediately Appealable as a Collateral Order.**

The court of appeals in this case held that a federal district court's denial of a motion to dismiss based on *Rooker-Feldman* may not be appealed as a collateral order. Under this holding, when the district court misapplies or ignores the *Rooker-Feldman* doctrine, the state court judgment is afforded no respect and instead undergoes the rigors of complete relitigation, as in the present case, through the entire federal

judicial system. This is what *Rooker-Feldman* is designed to prevent.

In *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), this Court held that an order of a district court is immediately appealable if (1) the order conclusively determines the disputed question, (2) the order resolves an important issue completely separate from and collateral to the merits of the case and (3) the rights involved would be irreparably lost if appellate review must be delayed until there is an appeal from a final judgment. *Id.* at 546; *see also, Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 113 S. Ct. 684, 687 (1993). The denial of a motion to dismiss based on *Rooker-Feldman* falls within the "collateral order" exception to the final order rule.

The denial of a motion to dismiss based on *Rooker-Feldman* clearly meets the first two prongs of the *Cohen* test. It conclusively determines whether or not there is a state court judgment precluding relitigation of identical issues. Moreover, a ruling on the doctrine addresses important issues that have nothing to do with the merits of the underlying case. In fact, *Rooker-Feldman* is meant specifically to prevent a federal court from reaching the merits of the underlying case.

Because the denial of a motion to dismiss based on *Rooker-Feldman* plainly meets the first two prongs of the *Cohen* test, the appealability of such an order depends on whether it meets the third, the "irreparable injury," prong. Here, the court of appeals concluded that the denial of a motion to dismiss based on *Rooker-Feldman* does not meet the "irreparable injury" prong of the *Cohen* test. In doing so, the court of appeals erred.

In *Digital Equipment Corp. v. Desktop Direct, Inc.*, 114 S. Ct. 1992 (1994), this Court held that a district court's refusal

to enforce a settlement agreement, which purportedly granted the defendant the "right not to stand trial," was not sufficient to satisfy the third, or "irreparable injury," prong of *Cohen*. In doing so, however, this Court carefully distinguished that case from those instances where the "right not to stand trial" is based not on privately negotiated contracts, but on statutory or constitutional guarantees.

This Court explained that the "fundamental" difference between rights based on statutes or constitutional provisions and those created by privately negotiated contracts is that the latter "simply . . . [do] not rise to the level of importance needed for recognition under § 1291." *Digital Equipment*, 114 S. Ct. at 2001. This Court continued:

> Where statutory and constitutional rights are concerned, "irretrievable loss" can hardly be trivial, and the collateral order doctrine might therefore be understood as reflecting the familiar principle of statutory construction that, when possible, courts should construe statutes (here §1291) to foster harmony with the other statutory and constitutional law.

*Id.* at 2002. Accordingly, where a right not to stand trial arises from a statutory or constitutional provision, which is the situation here, a ruling of a district court denying that right is of such "importance" that immediate review is appropriate. Indeed, when distinguishing *Digital Equipment* from *Midland Asphalt v. United States*, 489 U.S. 794 (1989), where Fifth Amendment rights were implicated, this Court stated: "Only such an 'explicit statutory or constitutional guarantee that trial will not occur,' we suggested, could be grounds for an immediate appeal as of right under Section 1291." *Digital Equipment*, 114 S. Ct. at 1099.

*Rooker-Feldman*, and the principles protected by it, are based on constitutional principles of federalism and comity and on 28 U.S.C. § 1257, and explicitly guarantee that where an issue is completely and finally litigated in a state court, the issue cannot be relitigated in a federal court. This guarantee means that if a federal district court erroneously denies a motion to dismiss based on *Rooker-Feldman*, an immediate appeal from the order is imperative because a trial under such circumstances inevitably compromises the principles behind *Rooker-Feldman*. Such an order is "effectively unreviewable" on appeal because the "failure to review immediately [will] cause significant harm." *Johnson v. Jones*, 115 S. Ct. 2151, 2155 (1995).

Here, the district court's denial of the motion to dismiss was directly contrary to controlling precedent in the Third Circuit. In *Blake v. Papadakos*, 953 F.2d 68 (3d Cir. 1992), and *Guarino v. Larsen*, 11 F.3d 1151 (3d Cir. 1993), the Court of Appeals for the Third Circuit held that an order of the Pennsylvania Supreme Court, in the course of litigation, affirming a previous administrative decision is, like any other order, entitled to *Rooker-Feldman* protection. Regardless of whether the original decision was administrative, therefore, a subsequent adjudication by a state court affirming that decision prevents the issue from being relitigated in a district court. *Blake*, 953 F.2d at 73; *Guarino*, 11 F.3d at 1159. While Judge Sylvester's decision to close the nursery may have been administrative, the ultimate order by the Supreme Court of Pennsylvania denying plaintiffs' request for injunctive relief was an adjudication. Accordingly, the district court's reasoning that the doctrine of judicial immunity does not apply because the closing of the nursery was administrative in nature is beside the point and simply wrong. Instead of focusing on the order of the Pennsylvania Supreme Court denying plaintiffs' request for injunctive relief, which it should have

done, the district court focused solely on Judge Sylvester's administrative action and, by doing so, committed plain error.

The court of appeals declared that the district court's error could not be addressed at this time because the interests protected by *Rooker-Feldman* would not be "effectively unreviewable," suggesting that the error could be corrected on appeal from a final judgment. This analysis, however, misapprehends the nature of the interests being protected by the doctrine. The protection afforded by *Rooker-Feldman* does *not* merely inure to litigants in a particular case -- for if it did, delay until an appeal from a final judgment might be attributed to the cost of a litigious society. Instead, and importantly, *Rooker-Feldman* protects the integrity of state courts, and this integrity is lost the very moment a district court begins to second-guess a state-court judgment. The fact that the district court can be reversed on appeal does not change this. Rather, once an order of a state court is disregarded, the finality of state court judgments is compromised, and the federalism concerns that this Court found so important in *Younger* are severely damaged.

If appellate consideration of the *Rooker-Feldman* bar must be deferred until after the district court completely reviews a final state court adjudication, then the *Rooker-Feldman* bar is of little value in protecting the state from having to defend state court adjudications in a federal district court. Under the analysis by the court below, so long as a court of appeals can eventually correct a district court's error in rejecting a *Rooker-Feldman* bar, it is of no consequence that a litigant is compelled to relitigate his or her case in federal court or that an adjudication by the highest court of a state will be subject to *de novo* review by a federal district court. 57 F.3d at 314.

As a result of the court of appeals' decision, plaintiffs who are not successful in a state case that has been passed on by the

state's highest tribunal can now sue state court judges in federal court, obtain district court review of the state court adjudication, and force the state judicial officers to incur the expense and burden of defending their rulings in a federal court. All this can take place before an appeal under section 1291 can rectify the intrusion into state court adjudications. Such a scenario violates this Court's admonition in *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), that "the 'consequences' with which we were concerned in [good faith immunity] are not limited to liability for only damages; they also include 'the general costs of subjecting officials to the risks of trial--distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service.'"

The serious effect that a district court's erroneous denial of a motion to dismiss based on *Rooker-Feldman* can have on litigants, and on the state court judiciary in particular, is apparent in this case. Because of the court of appeals' holding that the *Rooker-Feldman* issue does not present a collateral order, defendants, who are state judicial officers, must incur the unnecessary and unjustified burden of the time and expense of discovery and a trial, and the underlying determination by the Supreme Court of Pennsylvania is, in fact, subjected to appellate review by a federal district court. *Rooker-Feldman* is intended to prevent such a result.

## CONCLUSION

The *Rooker-Feldman* doctrine protects the finality of state court judgments and the integrity of state judicial systems. By holding that the denial of a motion to dismiss based on *Rooker-Feldman* is not immediately appealable as a collateral order, the Court of Appeals for the Third Circuit has seriously compromised the *Rooker-Feldman* protection. For that reason, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

ARLIN M. ADAMS*
MICHAEL J. BARRY
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS
Suite 3600, 1600 Market Street
Philadelphia, PA 19103-4252
(215) 751-2072

DAVID M. DONALDSON

Administrative Office of
Pennsylvania Courts
Suite 1414, 1515 Market Street
Philadelphia, Pennsylvania 19102

*Counsel for Petitioners*

Dated: September 5, 1995

# APPENDICES

**APPENDIX A**

Filed June 8, 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

---

No. 94-1635

---

ANDRE M. BRYANT; FATHERS' AND CHILDREN'S EQUALITY, INC.

*Appellees,*

v.

ESTHER R. SYLVESTER, HONORABLE, Administrative Judge-Family Division in her official and individual capacity; NANCY SOBOLEVITCH, Esquire, Court Administrator in Her Official and Individual Capacity; GEOFF GALLAS, Executive Court Administrator in His Official and Individual Capacity; MATTHEW TIERNEY, Court Administrator-family Division in His Official and Individual Capacity; JOSEPH DI PRIMIO, Esquire, Court Administrator in His Official and Individual Capacity; ANDREA HOFFMAN-JELIN, Esquire, Director of Children and Youth Services in Her Official and Individual Capacity

*Appellants.*

---

Appeal from the United States District Court
for the Eastern District of Pennsylvania

(D.C. Civil No 94-cv-01990)

---

ARGUED DECEMBER 7, 1994
OPINION VACATED JUNE 1, 1995

SUBMITTED PURSUANT TO LAR 34.1(a)
ON PANEL REHEARING JUNE 5, 1995

DAVID M. DONALDSON (argued), HOWARD M. HOLMES, Supreme Court of Pennsylvania, Administrative Office of Pa. Courts, Philadelphia, PA, for appellants.

RONALD K.M. WILLIAMS (argued), Northwest Legal Center, Philadelphia, PA, for appellees.

Before: STAPELTON, ROTH and LEWIS, Circuit Judges.

---

**OPINION OF THE COURT**

---

LEWIS, Circuit Judge.

This case raises an issue of apparent first impression: whether an order denying the *Rooker-Feldman* defense is final as a collateral order. We conclude that an order denying the *Rooker-Feldman* defense is not final as a collateral order and is not immediately appealable under the collateral order doctrine. We will therefore dismiss this appeal for lack of appellate jurisdiction.

I.

The Family Court Division of the Court of Common Pleas of Philadelphia County operates a nursery at the Family Court Building in Philadelphia. In operating this nursery, the Family Court provides an area for supervised visitation in cases in which supervised visitation has been ordered by the Family Court. In early November of 1993, the Honorable Esther Sylvester, Administrative Judge of the Family Court Division of the Philadelphia Court of Common Pleas, and a defendant in this case, approved the closing of the Family Court nursery on two dates: December 26, 1993 and January 2, 1994. The plaintiffs, Andre Bryant, a non-custodial parent restricted, by

court order, to visitation in the Family Court-operated nursery, and Fathers' and Children's Equality, Inc., a non-profit Pennsylvania corporation "chartered to insure the continual access of children to their non-custodial parents and extended family members," Plaintiffs' brief at 3, sought in Pennsylvania Commonwealth Court to enjoin the defendants from closing the nursery on these days. The matter was transferred on jurisdictional grounds to the Pennsylvania Supreme Court where the plaintiffs' request for a preliminary injunction was denied without hearing. No appeal to the United States Supreme Court was sought.

In early March of 1994, Judge Sylvester again authorized the closing of the Family Court nursery, this time on April 3, 1994. Soon after the authorization of this additional nursery closing, the plaintiffs filed this class action lawsuit in which they claim that by closing the nursery, the defendants violated their rights under First and Fourteenth Amendments. In lieu of filing an answer, the defendants moved to dismiss under Fed.R.Civ.P. 12(b)(1) and (6). The defendants contended, *inter alia*, that judicial immunity and the *Rooker-Feldman* doctrine required dismissal of the plaintiffs' complaint. The district court denied the defendants' motion to dismiss and ordered that discovery proceed. This appeal followed.[1]

---

[1] The question of the applicability of judicial immunity is not before us, as that issue, though argued in the defendants' brief, was waived at oral argument, during which the following exchange took place:

> The Court: You are not appealing from the denial of your motion insofar as it related and relied on judicial immunity?
>
> Answer: No, your honor, it is purely the *Rooker-Feldman* and the qualified immunity which applies to all the defendants. . . .
>
> . . . .
>
> The Court: Let me make sure I understand you. I understood you in response to my question on

---

direct to say that the issue of whether your motion was wrongfully denied insofar as it relied on judicial immunity was not before us, you were not pressing that argument . . . you wrote a section in your brief on it, but you are not --

Answer: I am not pressing the judicial immunity argument

....

The Court: You are not just talking about your argument this morning, your oral argument, you are saying we do not have to address those issues because your clients are no longer relying on them?

Answer: I do not press the judicial immunity argument, your honor.

Nor is the issue of *qualified* immunity before us, the defendants arguments to the contrary notwithstanding. Having found that the defendants did not assert qualified immunity, the district court did not consider the applicability of the qualified immunity defense. In this appeal, the defendants contend, with apparent support in the trial record, that they did in fact argue qualified immunity in the district court. However, the defendants did not assert qualified immunity in their motion to dismiss, nor did they argue qualified immunity in their brief in support of the motion. In a brief styled "Memorandum in Opposition to Plaintiffs' Motion to Amend Complaint and in Further Support of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment," which the defendants filed some six days prior to the district court's denial of their motion to dismiss, the defendants for the first time argued qualified immunity. Under these circumstances, the district court properly refrained from considering the issue of qualified immunity. Had the district court considered qualified immunity, the plaintiffs would have been prejudiced by not having had an opportunity to respond to the defendants' arguments regarding the applicability of qualified immunity prior to the district court's ruling on the defendants' motion. And because the district court did not err in refusing to consider qualified immunity, we lack jurisdiction to hear the defendants' appeal to the degree it raises the issue of qualified immunity. *See Kulwicki v. Dawson*, 969 F.2d 1454, 1460 (3d Cir. 1992) ("[o]ur jurisdiction to hear immunity appeals is limited only where the district court does not address the immunity question below, or where the court does not base its decision on immunity *per se*").

## II.

Ordinarily, we review only "final" decisions of the district court under 28 U.S.C. § 1291.[2] *Federal Ins. Co. v. Richard I. Rubin & Co., Inc., 12 F.3d 1270, 1279 (3d Cir. 1993).* A decision is final only when there is a "'decision by the district court that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Id.* (citation and internal quotation marks omitted). According to the defendants, however, we have appellate jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The defendants contend the district court's order denying the defendants' motion to dismiss is appealable under the "collateral order" doctrine first articulated in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949). In *Cohen*, the Supreme Court held that a "small class" of collateral orders are final and appealable under 28 U.S.C. § 1291 even though they do not terminate the underlying litigation. *Cohen*, 337 U.S. at 546. For an order to come within *Cohen's* collateral order rule, it must satisfy three tests: first, the order must "conclusively determine" the disputed question; second, it must "resolve an important issue completely separate" from the merits of the action; and third, it must be "effectively unreviewable" on appeal from a final judgment. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468-69 (1978). If the order at issue fails to satisfy any one of these requirements, it is not an appealable collateral order. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988); *Communication Workers v. American Tel. & Tel.*, 932 F.2d 199, 205 (3d Cir. 1991).

---

[2] 28 U.S.C. § 1291 provides:

> The courts of appeals...shall have jurisdiction of appeals from all final decisions of the district courts of the United States....

The Supreme Court has repeatedly referred to the collateral order doctrine as a "narrow exception" to the final judgment rule,[3] *see, e.g., Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 430 (1985) (citation omitted), and we have, accordingly, construed the doctrine narrowly "'lest the exception swallow up the salutary general rule' that only final orders may be appealed." *Yakowicz v. Pennsylvania*, 683 F.2d 778, 783 n. 10 (3d Cir. 1982) (citation omitted); *see Transtech Industries, Inc. v. A & Z Septic Clean*, 5 F.3d 51, 57 (3d Cir. 1993) ("We have followed the Supreme Court's admonition and 'have consistently construed the *Cohen* exception narrowly rather than expansively.'" (citations omitted)). Strict construction of the collateral order doctrine is designed to further the long-standing Congressional policy against piecemeal appeals which underlies the final judgment rule. *See Lusardi v. Xerox Corp.*, 747 F.2d 174, 177 (3d Cir. 1984)[4] To guard against the

---

[3] Recently, the Supreme Court observed that the collateral order doctrine is best understood not as an exception to the "final decision" rule laid down by Congress in 28 U.S.C., § 1291, "but as a 'practical construction' of it." *Digital Equipment Corporation v. Desktop Direct, Inc.*, 114 S. Ct. 1992, 1995 (1994)

> We have repeatedly held that the statute entitles a party to appeal not only from a district court decision that "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment," but also from a narrow class of decisions that do not terminate the litigation, but must, in the interest of "achieving a healthy legal system," nonetheless be treated as "final." *Id.* (citations omitted)

[4] We have stated that the final judgment rule serves a number of salutary purposes:

> It is intended to ensure efficient administration of scarce judicial resources. It facilitates maintenance of "the appropriate relationship between [trial and appellate] courts." In addition, in cases where the litigants may have unequal economic resources, it protects the judicial process and its participants from the delay which can prove advantageous to a well-financed litigant, and fatal to the less well-

temptation of expanding the doctrine's reach, the Supreme Court has instructed that the issue of the immediate appealability of orders that do not terminate litigation is to be determined for the entire category to which the order belongs, "without regard to the chance that the litigation at hand might be speeded, or a 'particular injustice' averted, by a prompt appellate court decision." *Digital Equipment Corporation v. Desktop Direct, Inc.* 114 S. Ct. 1992, 1996 (1994) (citation omitted).

Before determining whether the district court's order denying the defendants' *Rooker-Feldman* defense qualifies as a collateral order, a word or two is in order concerning *Rooker-Feldman*. The *Rooker-Feldman* doctrine provides that federal district courts lack subject matter jurisdiction to sit in direct review of state court adjudications or to hear constitutional claims that are "inextricably intertwined" with the state court's decision. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n. 16 (1983). *See also Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) ("Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify" a state court judgment). This limitation upon federal district court subject matter jurisdiction is usually said to derive from 28 U.S.C. § 1257, which provides that "[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court...." *See e.g., Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992). In addition to this formal statutory basis for the *Rooker-Feldman* doctrine, we have identifies other justifications for the rule:

---

endowed.

*Lusardi v. Xerox Corp.*, 747 F.2d 174, 177 (3d Cir. 1984) (citations omitted); *see also Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981).

> As with *Younger* abstention, which requires federal courts to abstain when there is a pending state court proceeding, part of the justification for *Rooker-Feldman* is a respect for state courts. Just as federal district courts should presume that pending state court proceedings can correctly resolve federal questions, they should also presume that completed state court proceedings have correctly resolved these questions.
>
> A second justification for *Rooker-Feldman* stems from its similarity to claim preclusion. Like claim preclusion, *Rooker-Feldman* is partly concerned with finality, with ensuring that litigants do not take multiple bites from the same apple. Once litigants' claims have been adjudicated in the state court system, they should not also have access to the entire federal court system.

*Guarino v. Larsen*, 11 F.3d 1151, 1157 (3d Cir. 1993) (citations omitted). With this sketch of the *Rooker-Feldman* doctrine's contours in mind, we turn now to evaluate the immediate appealability of the district court's order denying the defendants their *Rooker-Feldman* defense.

## III.

A decision denying a motion to dismiss for lack of subject matter jurisdiction is considered to fall outside the *Cohen* exception to the final decision rule. *See Transtech Industries, Inc. v. A & Z Septic Clean* 5 F.3d 51, 58 (3d Cir. 1993); *United States v. Layton*, 645 F.2d 681, 683 (9th Cir. 1981) (holding that challenges to subject matter jurisdiction generally fail the third prong of the *Cohen* test); *Moore's Federal Practice* ¶ 110.10 p. 74 (citing cases). Likewise, decisions denying assertions of *res judicata* are considered to be beyond the collateral order exception. *See Digital Equipment Corporation*, 114 S.Ct. at 1998; *Transtech Industries, Inc.*, 5

F.3d at 58. Because the *Rooker-Feldman* doctrine has a close affinity both with notions of subject matter jurisdiction and claim preclusion, we might be tempted to resolve the issue of the immediate appealability of *Rooker-Feldman* denials by way of analogy to the categories of claims. Moreover, underlying the *Rooker-Feldman* doctrine are concerns rooted in federalism and comity, concerns not necessarily present within the concepts of claim preclusion and subject matter jurisdiction. Therefore, we will address the immediate appealability of the denial of a *Rooker-Feldman* defense with explicit reference to the issue of respect for state courts that underlies the *Rooker-Feldman* doctrine.

Because we conclude that the third requirement - that the order be "effectively unreviewable" on appeal from a final judgment - is not met in this case, we need not discuss the first and second prerequisites for the collateral order doctrine to determine the immediate appealability of a denial of a *Rooker-Feldman* defense. *See Communication Workers,* 932 F.2d at 205 n.6 ("Since we find that the district court's order does not satisfy the third prong of *Cohen,* we do not consider whether the first and second prongs of *Cohen* are satisfied."). The Supreme Court has explained that, as a general rule, an order is "effectively unreviewable" only where "the order at issue involves 'an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *Lauro Lines S.R.L. v. Chasser,* 490 U.S. 495 , 499-500 (1989) (citation omitted); *accord Zosky v. Boyer,* 856 F.2d 554, 561 (3d Cir. 1988) (to be appealable under the collateral order doctrine, an order must be such that "review [of the order] postponed will, in effect, be review denied").

The Court's most recent discussion of the collateral order doctrine appears in *Digital Equipment Corporation*, decided less than a year ago. In that case, Desktop Direct, Inc. ("Desktop") sued Digital Equipment Corporation ("Digital")

for unlawful use of the "Desktop Direct" name. *Digital Equipment Corporation*, 114 S. Ct. at 1995. Soon after the filing of the complaint, the parties reached a settlement agreement. Pursuant to the agreement, Digital agreed to pay Desktop a sum of money for the right to use the "Desktop Direct" trade name and corresponding trademark, and for waiver of all damages and dismissal of the trademark infringement suit brought by Desktop against Digital. *Id.* Following the settlement agreement, Desktop filed a notice of dismissal in the district court. Several months later, however, Desktop moved to vacate the dismissal and rescind the settlement agreement on the ground that Digital had misrepresented material facts during the settlement negotiations. *Id.* The district court granted this motion. Digital then appealed. The Court of Appeals for the Tenth Circuit dismissed Digital's appeal for lack of appellate jurisdiction, holding that the order of the district court was not appealable under section 1291 because it neither ended the litigation nor fell within the collateral order exception to the final judgment rule. *Id.* The Supreme Court granted certiorari to consider whether an order denying effect to a private settlement agreement comes within the ambit of the collateral order rule. *Id.*

During the course of its analysis of this question, analysis which led to an affirmance of the Tenth Circuit's dismissal of Digital's appeal, the Court rejected Digital's argument that the identification of some interest or right that would be "irretrievably lost" *per se* satisfies the third *Cohen* requirement:

> [T]he strong bias of § 1291 against piecemeal appeals almost never operates without some cost. A fully litigated case can no more be untried than the law's proverbial bell can be unrung, and almost every pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to

> rewriting history. Thus, erroneous evidentiary rulings, grants or denials of attorney disqualification, and restrictions on the rights of intervening parties may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment . . . . But if immediate appellate review were available every such time, Congress's final decision rule would end up a pretty puny one, *and so the mere identification of some interest that would be "irretrievably lost" has never sufficed to meet the third Cohen requirement.*

*Digital Equipment Corporation,* 114 S. Ct. at 1998 (citations omitted) (emphasis supplied).

The Court also rejected Digital Equipment's contention that a party's ability to characterize the right allegedly denied as a "right not to stand trial" is both sufficient and necessary for a finding that the order appealed from is a collateral order. This contention, the Court explained, "is neither an accurate distillation of our case law nor an appealing prospect for adding to it." *Id.* The Court further explained that limiting the collateral order analysis to a focus upon whether the interest asserted could be called a "right not to stand trial" is inadequate to protect against "the urge to push the § 1291 limits." *Id.*

> We have, after all, acknowledged that virtually every right that could be enforced appropriately by pretrial dismissal might loosely be described as conferring a "right not to stand trial." Allowing immediate appeals to vindicate every such right would move § 1291 aside for claims that the district court lacks personal jurisdiction, that the statute of limitations has run, that the movant has been denied his [or her] Sixth Amendment right to speedy trial, that an action is barred

> on claim preclusion principles, that no material fact is in dispute and the moving party is entitled to judgment as a matter of law, or merely that the complaint fails to state a claim. Such motions can be made in virtually every case, and it would be no consolation that the party's meritless summary judgment motion or res judicata claim was rejected on immediate appeal; the damage to the efficient and congressionally mandated allocation of judicial responsibility would be done, and any improper purpose the appellant might have had in saddling its opponent with cost and delay would be accomplished. Thus, precisely because candor forces us to acknowledge that there is no single "obviously correct way to characterize" an asserted right, we have held that § 1291 requires courts of appeals to view claims of a "right not to be tried" with skepticism, if not a jaundiced eye.

*Id.* at 1998-99 (citations omitted).

In the wake of *Digital Equipment Corporation,* a party's ability to characterize a district court's decision as denying an irreparable "right not to stand trial" of itself will not suffice to entitle that party to an immediate appeal of the decision. *See Digital Equipment Corporation*, 114 S. Ct. at 1998. Following *Digital Equipment Corporation*, the analysis required under the third prong of the *Cohen* test does not entail so much the *characterization* of the right denied as it does inquiry into the relative *value* or *importance* of the interests "that would be [forever] lost through rigorous application of a final judgment requirement." *Id.* at 2001.

The defendants contend that the interests in federalism and comity sought to be protected by *Rooker-Feldman* would be irreparably harmed by the very fact of federal judicial inquiry into the state court decision at issue. "Once a state

adjudication is subjected to discovery, inquiry, review, trial, etc., the integrity of the decision, as protected from federal court review by *Rooker-Feldman* is gone forever." Defendants' Reply at 6. According to the defendants, *Rooker-Feldman* is the "equitable corollary to judicial immunity":

> [I]t is the immunity state decisions enjoy from federal district court review. Akin to Eleventh Amendment, absolute, or qualified immunity, *Rooker-Feldman* is of no practical value after final judgment and appeal, i.e., after federal review of a state court adjudication takes place. Any benefit to state courts conferred by *Rooker-Feldman* "is for the most part lost as litigation proceeds past motion practice." Quite simply, the very fact of a federal court inquiry, without immediate appeal, into a state court adjudication . . . renders *Rooker-Feldman* worthless.

Defendants' Reply at 7-8.

We disagree with the defendants' contention that *Rooker-Feldman* is of no practical value if its ultimate vindication must await the entry of final judgment following district court review of the state court adjudication at issue. The *Rooker-Feldman* doctrine's value as a protector of state courts is not irreparably undermined by district court review of state court adjudications; so long as district court review of a state court adjudication is followed by the proper application of the doctrine at the court of appeals level, the interests that *Rooker-Feldman* seeks to further will be secured. To understand why this is so, one need only compare *Rooker-Feldman* to the types of claims already deemed to fall within the ambit of the collateral order doctrine.

The purpose of the classic immunities - Eleventh Amendment, absolute and qualified immunity - all considered

to fall within the collateral order doctrine, is to prevent the holder of the immunity from being dragged into federal district court to answer to civil suits for damages. *See Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (stating that qualified immunity is a immunity from suit rather than a mere defense to liability; "and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial"); *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy*, 113 S. Ct 684, 689 (1993) ("'the very object and purpose of 11th Amendment [are] to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties'" (citation omitted)); *Nixon v. Fitzgerald*, 457 U.S. 731 (1982) (the essence of absolute immunity is the possessor's entitlement not to have to answer for his or her conduct in a civil damages action). It is easy to see how this purpose would be effectively thwarted were an order denying qualified immunity, for example, not held to be immediately appealable. Were such an order not immediately appealable, the qualified immunity holder would be forced to endure the burden of a trial – the very "harm" the immunity is supposed to immunize the holder against – before being permitted to seek the vindication of the immunity right. Simply put, the immunity holder would obtain absolutely nothing of value from the ultimate vindication of the immunity interest following a trial in the district court.[5]

Indeed, a finding that the failure to allow immediate appeal would lead to the infliction of some irreparable harm on an

---

[5] Precisely the same can be said, and has been said by the Supreme Court, with respect to orders denying the protection of the Speech or Debate Clause, as well as orders denying the right not to stand trial on double jeopardy grounds. *See Helstoski v. Meanor*, 442 U.S. 500 (1979) (holding that an order denying the protection of the Speech or Debate Clause is immediately appealable); *Abney v. United States*, 431 U.S. 651 (1977) (holding that an order denying the right not to stand trial on double jeopardy grounds is immediately appealable.

actual person or entity represents a common thread running through the cases in which we have found that the order in question constitutes a collateral order. In *Praxis Properties v. Colonial Sav. Bank*, 947 F.2d 49 (3d Cir. 1991), for example, a case in which we found an order denying Resolution Trust Corporation ("RTC") a stay under the stay provision of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1812(d)(12)[6] to be a collateral order, we stated:

> Congress afforded RTC this right to a stay under § 1821(d)(12) because it realized that upon RTC's appointment as receiver or conservator for a failed thrift, RTC is likely to find the thrift in a state of profound disarray and may require some breathing room to orient itself and determine how best to proceed with pending litigation. If the district court denies a proper request for a stay under § 1821(d)(12), RTC's statutory right to a short litigation cease-fire, like a government official's right to qualified immunity, is "irretrievably lost" absent immediate appeal.

*Id.* at 60. Similarly, in *Federal Ins. Co. v. Richard I. Rubin & Co., Inc.* 12 F.3d 1270 (3d Cir. 1993), a case in which we

---

[6] 12 U.S.C. § 1821(d)(12) provides:

> After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed --
>
> (i) 45 days, in the case of any conservator; and
> (ii) 90 days, in the case of any receiver
>
> in any judicial action or proceeding to which such institution is or becomes a party.

extended the collateral order doctrine to a claim for immunity from suit conferred by the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-1611, we stated:

> [P]roviding review only after a trial [of the order denying the FSIA defense] would destroy the "legal and practical value" of their sovereign immunity defense. At the post-trial stage of the proceeding, the Dutch parent corporations will have been forced to endure the very burden they are arguing they should not be subjected to in the first place – a trial on the merits.

*Id.* at 1282. *See also In re School Asbestos Litigation*, 842 F.2d 671 (3d Cir. 1988) (holding that an order denying a party the right to engage in public communications with persons and in fora unrelated to the litigation was immediately appealable because "'the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" (citation omitted)). In each of these cases, crucial to our conclusion that the order in question constituted an immediately appealable collateral order was the fact that failure to afford immediate appeal would have rendered the right asserted worthless to the actual entity holding the right. The same simply cannot be said in the context of Rooker-Feldman.

One of the interests that the *Rooker-Feldman* doctrine seeks to promote is respect for state courts. *Guarino*, 11 F.3d at 1157. To further this interest, the *Rooker-Feldman* doctrine precludes federal district court review of state court adjudications. *See id.* Significantly, the protection that *Rooker-Feldman* affords attaches not to the state courts themselves, but rather to their adjudications. Unlike people, states and state entities – the direct recipients and beneficiaries of the classic immunities, for example – adjudications do not suffer *irreparably* by being haled into federal district court for review. Indeed, once a court of appeals rules that under *Rooker-Feldman*, the district court lacked subject matter

jurisdiction to review the state court adjudication, it is, both as a practical as well as a legal matter, as if the state court adjudication had never been reviewed by a federal district court in the first place. So long as the state court adjudication's *Rooker-Feldman*-derived "immunity" is acknowledged and vindicated by the court of appeals following the entry of a final judgment, the interest in respecting state courts by holding their adjudications beyond federal district court scrutiny is *adequately* protected.[7]

By concluding that the denial of a *Rooker-Feldman* defense does not give rise to an immediately appealable collateral order, we do not gainsay the importance of the interests in federalism and comity that the *Rooker-Feldman* doctrine seeks to protect. We simply believe that these interests are not irreparably harmed through rigorous application of the final judgment rule. We note that in other contexts these same interests have been understood to be adequately vindicable on appeal following the entry of final judgment. *See Coleman by Lee v. Stanziani*, 735 F.2d 118 (3d Cir. 1984) (holding that the denial of a motion to dismiss asserting *Younger v. Harris* abstention grounds satisfies none of the *Cohen* requirements).

## IV. CONCLUSION

Having concluded that an order denying the *Rooker-Feldman* defense is not immediately appealable under the collateral order rule, we will dismiss for lack of appellate jurisdiction the defendants' appeal from the district court's order denying their *Rooker-Feldman* defense.

---

[7] We say that the *Rooker-Feldman* interests are *adequately* vindicable on appeal from a final judgment because we recognize, as has the Supreme Court, that section 1291 never operates without some cost. *Digital Equipment Corporation*, 114 S. Ct. at 1998. Litigants are always burdened in ways that are "only imperfectly reparable by appellate reversal of a final district court judgment." *Id.*

## APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA.

| | | |
|---|---|---|
| BRYANT | : | CIV. A. NO. 94-1990 |
| | : | |
| v. | : | [ENTERED JUNE 22, 1994] |
| | : | |
| SYLVESTER, ET AL. | : | |

RONALD K.M. WILLIAMS, NORTHWEST LEGAL CENTER, P.C., Philadelphia, Pennsylvania, for Plaintiffs.

HOWARD M. HOLMES, ADMINISTRATIVE OFFICE OF PA COURTS, Philadelphia, Pennsylvania, for Defendants.

JUNE 20, 1994

ANITA B. BRODY, District Judge.

---

MEMORANDUM IN SUPPORT OF ORDER

---

On May 25, 1994, I issued an order denying defendants' motion to dismiss plaintiffs' suit for damages based on alleged First Amendment violations caused by defendants' decision to close a court operated supervised visitation nursery on or around religious holidays. The motion to dismiss was based on the following grounds: standing, judicial immunity, domestic relations abstention, *Younger* abstention, and the *Rooker-Feldman* doctrine. The defendants raised only a perfunctory

argument on the merits of the complaint, supported by no precedent or legal analysis. Furthermore, the argument is dependent on an affidavit of one of the defendants, which I will not consider at the motion to dismiss stage. The defendants did not argue qualified immunity.[1]

On June 16, 1994, the defendants noticed appeal of my order. Because a denial of a motion to dismiss is not a final order, as a general rule no appeal can be taken from it. *Decker v. IHC Hospitals, Inc.*, 982 F.2d 433 (10th Cir. 1992). However, appeals are permitted of orders denying motions to dismiss where the motions are based on immunity from suit. *Id.* Accordingly, I will state the authority for my ruling on judicial immunity.

The judicial officials who are defendants in this action are being sued for a decision to close a court operated nursery. Absolute judicial immunity is limited to acts which are truly judicial, not administrative or legislative. *See Forrester v. White*, 484 U.S. 219 (1988); *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989). The further removed an act by a judge is from the "paradigmatic judicial act" -- "the resolution of a dispute between parties" -- the less applicable is the defense of judicial immunity. *Morrison*, 877 F.2d at 465. An administrative function is not subject to judicial immunity even if it is "essential to the legal system." *Id.*; *see also Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. 719 (1980). Under this set of principles, I find that the acts upon which the defendants are sued are administrative functions for which absolute judicial immunity is not appropriate. *Cf. Forrester*, 484 U.S. 219 (1988) (employee

---

[1] The defendants did include quasi-judicial immunity in its list of grounds for dismissal. *See* page 6 of defendants' motion to dismiss. However, this ground was never argued in the memorandum of law in support of the motion to dismiss.

discharge is administrative act not subject to judicial immunity); *Supreme Court of Virginia*, 446 U.S. 719 (1980) (issuing of Bar Code is legislative function not subject to judicial immunity); *Morrison*, 877 F.2d 463 (6th Cir. 1989) (chief judge's moratorium on issuance of writs of restitution during holiday season is administrative function not subject to judicial immunity).

**APPENDIX C**

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

| | | |
|---|---|---|
| ANDRE BRYANT and FATHER'S AND CHILDREN'S EQUALITY, INC., | : | No. 150 E.D. Misc. Dkt. 1993 |
| Petitioners | : | |
| v. | : | [Entered December 17, 1993] |
| HONORABLE ESTHER R. SYLVESTER, ET AL. | : | |

ORDER

PER CURIAM:

AND NOW, this 17th day of December, 1993, the request for leave to file is granted and the requests for preliminary injunction and writ of mandamus are denied. Judge's name to be stricken from the caption.